

## PARTICIPATING ADDENDUM

### for State of Washington

(Washington State Department of Information Services Amendment Number 00-01)

## WESTERN STATES CONTRACTING ALLIANCE

### DELL MARKETING L.P.

#### MASTER PRICE AGREEMENT

92-00151

To go directly to the pricing: [http://techmall.dis.wa.gov/master\\_contracts/PCs/dell\\_PCs.asp](http://techmall.dis.wa.gov/master_contracts/PCs/dell_PCs.asp)

1. Scope: The **Washington State Department of Information Services (“DIS”)** is the Participating Entity under this Participating Addendum and its jurisdiction for purposes of this Agreement includes any Washington State agency with properly delegated authority to purchase the Products and Services that are the subject of this Agreement, or any political subdivision (including public schools, colleges or universities) of the state of Washington or non-profit organization with the authority to purchase such Products or Services, who have a properly executed Interlocal Cooperative Agreement (Customer Service Agreement) with DIS. This Participating Addendum is not for personal use.
2. Changes:
  - a) Paragraph 1 (Definitions)

Add at the end of the “Equipment” definition text the following:

“Equipment” shall include DellWare items to the extent that such items are reasonably tied to a microcomputer system sold hereunder. This Agreement shall not include the following items: furniture, telephone equipment, video games, copiers, and any additional products identified by DIS.
  - b) Paragraph 6 (Payment Provisions).
    - (i) In subparagraph A (Acceptance), delete the second sentence, and in the third sentence replace the word “invoice” with “delivery.”
    - (ii) Replace the text in the first paragraph of subparagraph B (Payment of Invoice) with the following:

Payments shall be submitted to the Contractor at the address shown on the invoice. Payment shall be tendered to the Contractor within thirty (30) days after delivery of all Products on such invoice or thirty (30) days after receipt of the properly prepared invoice, whichever is later. If the Procuring Agency fails to make timely payment, Contractor may invoice the Procuring Agency one percent (1%) per month on the amount overdue. The Procuring Agency shall make a good faith effort to pay within thirty (30) days of the invoice date of a properly prepared invoice.
    - (iii) Add at the end of the text in subparagraph D (Invoices) the following:

The Master Price Agreement number (92-00151) shall appear on all invoices, bills of lading, packages, and correspondence relating to this Agreement.
  - c) Paragraph 8 (Termination)

Add after the first sentence in subparagraph A (Termination for Convenience) the following:

At any time after the first anniversary date of the Agreement, DIS may terminate its Participating Addendum, in whole or in part, by giving the Contractor thirty (30) days written notice.

d) Paragraph 12 (Patent, Copyright, Trademark and Trade Secret Indemnification).

Replace the text of subparagraph A2 with the following:

cooperate with and agree to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations; and

e) Paragraph 31 (Applicable Law).

Replace the text with the following:

This Agreement shall be governed in all respects by the law and statutes of the state of Washington. Jurisdiction for any action hereunder shall be the Superior Court for the state of Washington. Venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

f) Add new paragraph 47 (Washington Administration Reporting and Fees).

Contractor agrees to provide monthly reports to the Washington Primary Contact (Paragraph 4 below). The monthly report shall include the gross Washington sales for the month just ended, excluding sales tax, subtotaled by Procuring Agency name within Washington and shall include the Dell customer number for each Procuring Agency. The report shall be accompanied with a check payable to **TBS Contract Manager** for an amount equal to one and one-half percent (1.5% or .015) of the gross Washington sales, excluding sales tax, for the month. The monthly report and fee shall be submitted by the last business day of the month following the month in which Contractor invoiced the Procuring Agency. Monthly reports are required even if no activity occurred.

g) Add new paragraph 48 (Participating Entity Invoice Audits).

As a part of its Participating Entity function, DIS will from time to time perform audits of Procuring Agency invoices to ensure that the Contractor has been properly preparing invoices and that the Products and Services and the prices charged for the Products and Services appear on the invoice exactly as they appeared on the then-applicable ESS. DIS will perform these audits by selecting Procuring Agencies from a periodic report and asking Contractor to send the invoices for those Procuring Agencies for that report period. The DIS request will be in writing, and will list the Dell customer numbers for the Procuring Agencies. Contractor shall ensure that DIS receives the requested invoices within thirty (30) days of Contractor's receipt of DIS' request. Contractor shall be responsible for any audit exceptions or disallowed costs.

h) Add new paragraph 49 (Contractor's Proprietary Information).

Contractor acknowledges that the Participating Entity is subject to chapter 42.17 Revised Code of Washington (RCW) and that this Agreement shall be a public record as defined in RCW 42.17.250 through 42.17.340. Any specific information that Contractor claims to be confidential or proprietary shall be clearly identified as such by Contractor. To the extent consistent with chapter 42.17 RCW, the Participating Entity shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, the Participating Entity will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, the Participating Entity will release the requested information on the date specified.

i) Add new paragraph 50 (Servicing Subcontractor).

The Procuring Agency is requested to specify the name and address of a valid Servicing Subcontractor on each Purchase Order. Servicing Subcontractors shall be authorized dealers of the Contractor and approved by the Participating Entity. The list of approved Servicing Subcontractors for the Participating Entity shall appear on the Participating Addendum. If the Procuring Agency fails to specify a Servicing Subcontractor, the Contractor may assign a Servicing Subcontractor from the list of Servicing Subcontractors on the appropriate Participating Addendum. The Participating Entity may amend the list of Servicing Subcontractors by providing Contractor with a revised Participating Addendum.

3. Lease Agreements: The lease agreement terms and conditions have not been approved for use by Procuring Agencies under this Participating Addendum.
4. Primary Contact: The primary contact individual for this Participating Addendum is as follows:

**Bob DeShaye**  
**PO Box 42445**  
**605 11<sup>th</sup> Avenue SE**  
**Olympia, WA 98504-2445**  
**Telephone: (360) 902-0304**  
**Fax: (360) 753-1673**  
**E-mail: bobd@dis.wa.gov**

5. Price Agreement Number: All Purchase Orders issued by Procuring Agencies within the state of Washington shall include the following price agreement number: 92-00151.
6. Servicing Contractors: The following servicing subcontractors are authorized to perform services: IBM Global Services, BancTec, Wang, and GetronicsWang.

This Addendum and the Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter hereof and supercedes all previous communications, representations or agreements, whether oral or written. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

**APPROVED**

State of Washington  
Department of Information Services

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Michael D. McVicker  
Print or Type Name

\_\_\_\_\_  
Assistant Director, TSD  
Title

\_\_\_\_\_  
Date

**APPROVED**

Dell Marketing L.P.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date